

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CALLAWAY GOLF COMPANY)	
)	
Plaintiff,)	
)	C. A. No. 06-91 (SLR)
v.)	
)	PUBLIC VERSION
ACUSHNET COMPANY,)	
)	
Defendant.)	

**ACUSHNET COMPANY'S PROFFER REGARDING
NEW PRO V1 GOLF BALLS**

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Dated: March 25, 2010
Public Version Dated: April 2, 2010
959988 /30030

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In its Memorandum Opinion dated March 3, 2010, the Court granted Callaway's motion to exclude evidence relating to Acushnet's New Pro V1 golf balls.¹ In light of the Court's decision, Acushnet submits this proffer of evidence for the purposes of appeal.

In this trial, percipient witnesses described non-infringing alternative golf ball constructions that were available to Acushnet at the time infringement began, and that Acushnet in fact made, where the inner cover layer composition of the accused golf balls used a blend of high acid ionomer and metallocene. T. Tr. 332:17-335:8; T. Tr. 418:20-419:22. Acushnet made and tested these non-infringing alternative golf balls in the 2001-2002 time frame, [REDACTED]. The contemporaneous tests showed that the performance of those golf balls was comparable to the existing Pro V1. T. Tr. 424:22-425:5; DX-655.

If Acushnet had been permitted, it would have offered evidence showing that the New Pro V1 golf balls do not infringe the patents-in-suit because there is no low-acid

¹ The "New Pro V1" golf balls include the "Modified 2007 Pro V1" and "Modified 2007 Pro V1x" golf balls, as well as the 2009 Pro V1 and Pro V1x golf balls.

ionomer in the inner cover layer. Acushnet would also have offered evidence that the New Pro V1 golf balls use a blend of materials in their inner cover layer very similar to the alternative golf balls made around the time infringement began. Acushnet would also have offered evidence that the New Pro V1 golf balls were just as successful as the accused Pro V1 golf balls in terms of performance, as well as in terms of sales in the marketplace. In addition, Acushnet would have presented evidence of the minimal cost increase associated with making the New Pro V1 golf balls.

Acushnet additionally would have offered the testimony of its damages expert Dr. William Kerr, regarding his consideration of the non-infringing alternatives in his damages analysis. Dr. Kerr's expert report sets forth his opinions and is attached hereto as Exhibit 1.

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on April 2, 2010, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on April 2, 2010, the attached document was Electronically Mailed to the following person(s):

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